IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5228 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MANJUBEN WD/O ANTURAM HARIYANI - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR DC SEJPAL for Petitioner(s) : 1,MR RC SEJPAL for Petitioner(s) : 1,
MR IM PANDYA, AGP, for Respondent(s) : 1 - 2.
MR BIREN A VAISHNAV for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 27/01/2006

ORAL JUDGMENT

1. By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed for a direction to quash and set aside the order of termination of her services as a Peon from the respondent no.3

Nagarpalika.

2. In exercise of powers under section 260 of the Gujarat Municipalities Act, 1963, the Regional Director of Municipalities, Rajkot, passed order dated 29th April 2002, whereby it was directed that the respondent Municipality should terminate the services of the persons named therein as their appointment was not as per the set up of the Municipality.

3. It is the case of the petitioner that though initially she was appointed as a Daily Wager Peon in June 1998, she was made permanent on 28.6.2001 by the respondent no.3 Municipality and was subsequently adjusted against the vacant post in the set up by order dated 28.6.2001. According to the petitioner there are sanctioned posts in the Municipality and in fact persons junior to the petitioner have been continued whereas her services have been terminated in violation of the provisions of Section 25-F and 25-G of the Industrial Disputes Act, 1947.

4. Learned counsel for the respondent submitted that the petitioner ought to have invoked the remedy as

provided under the Industrial Disputes Act instead of approaching this Court under Article 226 of the Constitution of India.

5. In view of the fact that the petition has already been admitted, I am not inclined to dismiss this petition on such technical plea raised by Vaishnav for the respondent Municipality. The fact that the petitioner's services have been terminated in violation of the provisions of the Act is not disputed and the only defence is that since the appointment was made at the behest of the then President of the Municipality and that the Regional Director of the Municipalities had directed the respondent no.3 Municipality to terminate the services of the petitioner it was thought necessary to terminate the services of the petitioner.

6. Looking to the fact that the the respondent no.3 Municipality is a public body and that petitioner is a widow and was initially appointed in June 1998 and thereafter absorbed on the vacant post on 29.6.2001 and when admittedly the termination order has been passed in violation of the provisions of section 25-F and 25-G of the Act, the order terminating the services of the

petitioner from the respondent Municipality as Peon is required to be quashed and set aside. However, I am of the view that since respondent has not worked during the intervening period, no back wages are required to be granted.

7. In the result the petition is partly allowed. The impugned order terminating the services of the petitioner is quashed and set aside. The respondent no.3 Municipality shall reinstate the petitioner on her permanent original post with continuity of service and other consequential benefits such as seniority, etc., within a period of three weeks from the date of receipt of writ of this Court. It is clarified that the petitioner will not be entitled for any back wages. Rule is made absolute accordingly with no order as to costs. Direct service is permitted.

[K.S. JHAVERI, J.]

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